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**Attachments:** Welcoming City Ordinance-Sample-Draft-1.docx

CITY CLERK

Adopt the Welcoming City Ordinance in your  
Town or City!

## GUEST COMMENTARY: Welcome City Ordinance embodies Region

- Alfredo Estrada
- May 28, 2017



Alfredo Estrada

Provided

Northwest Indiana is a region of immigrants — built by immigrants and defined by a past of various immigrant influxes.

Recently, I presented and met with various municipal leaders concerning a Welcome City Ordinance. The city of Gary has adopted the ordinance. The Welcome City Ordinance addresses Region residents' safety, access to municipal benefits and preserves scarce municipal resources.

In the face of the Region's changing demographics, prospective prosperity is contingent, in part, on the ability of municipalities to attract, retain and serve a diverse population with diverse sets of skills and needs.

This fact has been compounded by the decline of manufacturing jobs, which the Region has relied upon to grow populations and economies. Therefore, Region municipalities must look elsewhere to stimulate economic growth.

This can be done by attracting immigrants and encouraging immigrant entrepreneurship and residency, regardless of legal status.

One example of this is Indiana's lack of inquiry or requirement of legal status to incorporate a business or create a limited liability company.

The Region has been and is an unceasing immigrant entryway with a large, diverse immigrant population. To continue this and expand the Region's economy, Region municipalities must adopt policies recognizing immigrants' skills and needs, such as the Welcome City Ordinance.

Although a municipality lacks the power to alter federal immigration law and policy, or the immigration status of residents, it can assist by promoting a welcoming atmosphere for all residents, including immigrants. Gary and other Region municipalities currently reviewing the Welcome City Ordinance are part of a nationwide movement of cities and towns attempting to make communities more welcoming to immigrants.

The Welcome City Ordinance, in part:

- prohibits the city from conditioning city benefits or opportunities based on legal status.
- prohibits city agents from coercing or threatening an individual based on perceived citizenship or legal status.
- recognizes that immigration enforcement actions are a federal responsibility and that scarce city resources shall not be commandeered to enforce federal immigration law.
- requires the city to designate an individual to review certifications for U Visas (visas allocated for victims of crimes who are helpful in the apprehension or prosecution of criminals) and establishes a time frame for response.
- prohibits the city in participating in any federal program to register individuals based upon race, religion, color, ancestry or national origin.

- requires review of policies and identifying changes necessary to ensure information collected from individuals is limited to that necessary in regards to the city benefit.

No longer can we live in the realm of unproven rhetoric and bias. We must steer the conversation to fact and law.

If we strive for safer communities, dialogue between residents and leadership and to preserve municipal resources, Region cities and towns must adopt the Welcome City Ordinance.

**Alfredo Estrada is an attorney at Burke Costanza & Carberry LLP. His practice focuses on immigration, municipal defense, and civil litigation. The opinions are the writer's.**

## Protect our Human Rights, our Civil Rights and our Constitutional Rights!



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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EAST CHICAGO , INDIANA

## **WELCOMING CITY ORDINANCE**

### **Section 1. Purpose and intent.**

It is the purpose and intent of the City of East Chicago to recognize the present and historic importance of immigrants to our community and to further demonstrate the City of East Chicago's commitment to ensure public safety for all city residents and specifically enable immigrants to report crimes.

Additionally, it is the intent of the City of East Chicago to support immigration enforcement as a federal matter. The City of East Chicago is committed to upholding the Constitution, including the 4th Amendment requirements of probable cause for arrest and detention and the 10th amendment bar on commandeering of local governments to perform federal functions.

### **Section 2. Definitions.**

The following terms wherever used in this chapter shall have the following meanings unless a different meaning appears from the context:

"Administrative warrant" means an immigration warrant of arrest, order to detain or release aliens, notice of custody determination, notice to appear, removal order, warrant of removal, or any other document, issued by ICE that can form the basis for an individual's arrest or detention for a civil immigration enforcement purpose. This definition does not include any criminal warrants issued upon a judicial determination of probable cause and in compliance with the requirements of the Fourth Amendment to the U.S. Constitution and the Indiana Constitution.

"Agency" means every municipal department, agency, division, commission, council, committee, board, other body, or person established by authority of an ordinance, executive order, or City Council order.

"Agent" means any person employed by or acting on behalf of an agency.

"Certification" means any law enforcement certification or statement required by federal immigration law including, but not limited to, the information required by Section 1184(p) of Title 8 of the United States Code (including current United States Citizenship and Immigration Service Form I-918, Supplement B, or any successor forms) for purposes of obtaining a U visa, or by Section 1184(o) of Title 8 of the United States Code (including current United States Citizenship and Immigration Service Form I-914, Supplement B, or any successor forms) for purposes of obtaining a T visa.

"Certifying agency" means a municipal law enforcement agency or other authority that has responsibility for the investigation or prosecution of criminal activity. "Certifying agency" includes any agency that has criminal investigative jurisdiction in its respective areas of expertise.

"Citizenship or immigration status" means all matters regarding questions of citizenship of the United States or any other country, the authority to reside in or otherwise be present in the United States, the time and manner of a person's entry into the United States, or any other immigration matter enforced by the Department of Homeland Security or successor or other federal agency charged with the enforcement of civil immigration laws.

"Coerce" means to use express or implied threats towards a person or any family member of a person that attempts to put the person in immediate fear of the consequences in order to compel that person to act against his or her will.

“Contact information” means home address, work address, telephone number, electronic mail address, social media contact information, or any other means of contacting an individual.

“Eligible for release from custody” means that the person may be released from custody because one of the following conditions has occurred:

- (1) All criminal charges against the person have been dropped or dismissed.
- (2) The person has been acquitted of all criminal charges filed against him or her.
- (3) The person has served all the time required for his or her sentence.
- (4) The person has posted a bond.
- (5) The person is otherwise eligible for release under state or local law, or local policy.

“Family member” means a person’s (i) mother, father, spouse, brother or sister (including blood, step or half), son or daughter (including blood, step or half), father-in-law, mother-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, grandparent or grandchild; or (ii) court-appointed legal guardian or a person for whom the person is a court-appointed legal guardian; or (iii) domestic partner or the domestic partner’s mother, father, brother, sister (including blood, step, or half), son or daughter (including blood, step or half).

“ICE” means the United States Immigration and Customs Enforcement Agency and shall include any successor agency charged with the enforcement of civil immigration laws.

“Immigration detainer” means a request by ICE to a federal, state, or local law enforcement agency that requests that the law enforcement agency provide notice of release or maintain custody of an individual based on an alleged violation of a civil immigration law, including detainers issued pursuant to Sections 1226 or 1357 of Title 8 of the United States Code or 287.7 or 236.1 of Title 8 of the Code of Federal Regulations.

“immigration enforcement operation” means any operation that has as one of its objectives the identification or apprehension of a person or persons: 1) in order to subject them to civil immigration detention, removal proceedings and removal from the United States; or 2) to criminally prosecute a person or persons for offenses related to immigration status, including but not limited to violations of Sections 1253, 1304, 1306(a) and (b), 1325, or 1326 of Title 8 of the United States Code.

“Qualifying criminal activity” means any activity involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in Section 1351 of Title 18 of the United States Code); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. This list of qualifying criminal activity is not a list of specific statutory violations, but instead a list of general categories of criminal activity. Activity not listed in the first sentence of this definition shall be presumed to be qualifying criminal activity when there is an articulable similarity to any qualifying criminal activity listed herein. Qualifying criminal activity that occurs during the commission of non-qualifying criminal activity shall be considered qualifying criminal activity regardless of whether criminal prosecution was sought for the qualifying criminal activity.

“Verbal abuse” means the use of a remark which is overtly insulting, mocking or belittling directed at a person based upon the actual or perceived: (1) race, color, sex, religion, national origin, English proficiency, sexual orientation, or gender identity of that person, or (2) citizenship or immigration status of that person or that person’s family member.

"Victim of qualifying criminal activity" means any individual who has reported qualifying criminal activity to a law enforcement agency or certifying agency, or has otherwise participated in the detection, investigation, or prosecution of qualifying criminal activity, who has suffered direct or proximate harm as a result of the commission of any qualifying criminal activity and may include, but is not limited to, an indirect victim, regardless of the direct victim's immigration or citizenship status, including the spouse, children under 21 years of age, and, if the direct victim is under 21 years of age, deceased, incompetent or incapacitated, parents and unmarried siblings under 18 years of age of the direct victim. A bystander victim may also be considered as a "victim of qualifying criminal activity". More than one victim may be identified and provided with certification depending upon the circumstances. A "victim of qualifying criminal activity" may also include a victim of a severe form of trafficking in persons as defined in Section 7102 of Title 22 of the United States Code. For purposes of this definition, the term "incapacitated" means unable to interact with law enforcement agency or certifying agency personnel as a result of a cognitive impairment or other physical limitation, or because of physical restraint or disappearance.

### **Section 3. Requesting information prohibited.**

No agent or agency shall request information about or otherwise investigate or assist in the investigation of the citizenship or immigration status of any person unless such inquiry or investigation is required by an order issued by a court of competent jurisdiction. Notwithstanding this provision, the Corporation Counsel may investigate and inquire about citizenship or immigration status when relevant to potential or actual litigation or an administrative proceeding in which the City is or may be a party.

### **Section 4. Conditioning benefits, services, or opportunities on immigrant status prohibited.**

- (a) No agent or agency shall withhold any municipal benefits, services, or opportunities on matters related to citizenship or immigration status unless required to do so by state or federal law, or court order.
- (b) Where presentation of any driver's license, including an international driver's license, or identification card is accepted as adequate evidence of identity, presentation of a photo identity document issued by the person's nation of origin, such as a driver's license, passport, or consular identification document, shall be accepted and shall not subject the person to a higher level of scrutiny or different treatment than if that person had provided a Indiana driver's license or identification card except that this subsection (b) shall not apply to the completion of the federally mandated I-9 forms.
- (c) In order to ensure that eligible persons are not deterred from seeking municipal benefits, services, or opportunities, all agencies shall review their confidentiality policies and identify any changes necessary to ensure that information collected from individuals is limited to that necessary to perform agency duties and is not used or disclosed for any other purpose. Any necessary changes to those policies shall be made as expeditiously, as possible, consistent with agency procedures.
- (d) All applications, questionnaires, and interview forms used in relation to municipal benefits, opportunities, or services shall be promptly reviewed by the pertinent agencies and any questions regarding citizenship or immigration status, other than those required by statute, ordinance, federal law or court order, shall be deleted within 60 days of the passage of this ordinance.

### **Section 5. Threats based on citizenship or immigration status prohibited.**

No agent or agency shall do any of the following:

- (a) coerce any person based upon the person's actual or perceived citizenship or immigration status or the actual or perceived citizenship or immigration status of the person's family member; or
- (b) communicate a threat to deport that person or any family member of that person under circumstances that reasonably tend to produce a fear that the threat will be carried out; or

(c) otherwise subject a person to verbal abuse as defined by this chapter.

**Section 6. Immigration enforcement actions – Federal responsibility.**

No agency or agent shall stop, arrest, detain, or continue to detain a person after that person becomes eligible for release from custody or is free to leave an encounter with an agent or agency, based on any of the following:

(1) an immigration detainer;

(2) an administrative warrant (including but not limited to entered into the Federal Bureau of Investigation's National Crime Information Center database); or

(3) any other basis that is based solely on the belief that the person is not present legally in the United States, or that the person has committed a civil immigration violation.

(a) No agency or agent shall be permitted to accept requests by ICE or other agencies to support or assist in any capacity with immigration enforcement operations, including but not limited to requests to provide information on persons who may be the subject of immigration enforcement operations (except as may be required under section 11 of this ordinance), to establish traffic perimeters, or to otherwise be present to assist or support an operation. In the event an agent receives a request to support or assist in an immigration enforcement operation, he or she shall report the request to his or her supervisor, who shall decline the request and document the declination in an interoffice memorandum to the agency director through the chain of command.

(b) No agency or agent shall enter into an agreement under Section 1357(g) of Title 8 of the United States Code or any other federal law that permits state or local governmental entities to enforce federal civil immigration laws.

(c) Unless presented with a valid and properly issued criminal warrant, no agency or agent shall:

(1) permit ICE agents access to a person being detained by, or in the custody of, the agency or agent;

(2) transfer any person into ICE custody;

(3) permit ICE agents use of agency facilities, information (except as may be required under section 11 of this ordinance), or equipment, including any agency electronic databases, for investigative interviews or other investigative purpose or for purposes of executing an immigration enforcement operation; or

(4) expend the time of the agency or agent in responding to ICE inquiries or communicating with ICE regarding a person's custody status, release date, or contact information.

**Section 7. Certifications for victims of certain criminal activity.**

(a) A certifying agency shall execute any certification requested by any victim of qualifying criminal activity or representative of the victim including, but not limited to, the victim's attorney, accredited representative, or domestic violence service provider, within 90 days of receiving the request. If the victim seeking certification is in federal immigration removal proceedings, the certifying agency shall execute the certification no later than 14 days after the request is received by the agency. If the victim or the victim's children would lose any benefits under Sections 1184(p) and 1184(o) of Title 8 of the United States Code by virtue of having reached the age of 21 years within 90 days after the certifying agency receives the certification request, the certifying agency shall execute the certification no later than 14 days before the date on which the victim or child would reach the age of 21 years. Requests for expedited certification must be affirmatively raised by the victim.

(b) If a certifying agency fails to certify within the time limit prescribed in subsection (a) of this Section, or a victim of qualifying criminal activity disputes the content of a certification, then the

victim of qualifying criminal activity may bring an action in circuit court to seek certification or amend the certification. The court shall award court costs and reasonable attorneys' fees to any person who brings a proceeding brought pursuant to this subsection who prevails.

(c) The head of each certifying agency shall perform, or designate an agent, who performs a supervisory role within the agency, to perform the following responsibilities:

(1) respond to requests for certifications;

(2) provide outreach to victims of qualifying criminal activity to inform them of the agency's certification process; and

(3) keep written records of all certification requests and responses.

(d) All certifying agencies shall implement a language access protocol for non-English speaking victims of qualifying criminal activity.

(e) A certifying agency shall reissue any certification within 90 days of receiving a request from the victim of qualifying criminal activity or representative of the victim including, but not limited to, the victim's attorney, accredited representative, or domestic violence service provider.

(f) Notwithstanding any other provision of this section, a certifying agency's completion of a certification shall not be considered conclusory evidence that the victim has met eligibility requirements for a U or T visa and completion of a certification by a certifying agency shall not be construed to guarantee that a victim will receive federal immigration relief. It is the exclusive responsibility of federal immigration officials to determine whether a victim of qualifying criminal activity is eligible for a U or T visa. Completion of a certification by a certifying agency merely verifies factual information relevant to the immigration benefit sought including information relevant for federal immigration officials to determine eligibility for a U or T visa. By completing a certification, the certifying agency attests that the information is true and correct to the best of the certifying official's knowledge. If after completion of a certification, the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, then the certifying agency may notify the United States Citizenship and Immigration Service in writing.

#### **Section 8. Federal registry programs**

No agency or agent shall expend any time, facilities, equipment, information, or other resources of the agency or agent to facilitate the creation, publication, or maintenance of any federal program to register individuals present in the United States based on their race, color, ancestry, national origin, or religion, or the participation of any residents of the municipality in such a registry.

#### **Section 9. Commitments.**

(a) The City commits to working with community advocates, policy experts, and legal advocates to defend the human rights of immigrants.

(b) The East Chicago Police Department will continue to respond to requests from immigrant communities to defend them against all crimes, including hate crimes, to assist people with limited language proficiency and to connect immigrants with social services.

(c) The City recognizes the arrest of an individual increases that individual's risk of deportation even in cases where the individual is found to be not guilty, creating a disproportionate impact from law enforcement operations. Therefore, for all individuals, the East Chicago Police Department will recognize and consider the extreme potential negative consequences of an arrest in exercising its discretion regarding whether to take such an action and will arrest an individual only after determining that less severe alternatives are unavailable or would be inadequate to effect a satisfactory resolution.

(d) The East Chicago Police Department will make available and provide material at all East Chicago Police Stations concerning this ordinance and information concerning rights of all immigrants.



**Section 10. Information regarding citizenship or immigration status.**

Nothing in this chapter prohibits any municipal agency from sending to, or receiving from, any local, state, federal agency, information regarding an individual's citizenship or immigration status. All municipal agents shall be instructed that federal law does not allow any such prohibition. "Information regarding an individual's citizenship or immigration status," for purposes of this section, means a statement of the individual's country of citizenship or a statement of the individual's immigration status.

**Section 11. Severability.**

If any provision, clause, section, part, or application of this chapter to any person or circumstance is declared invalid by any court of competent jurisdiction, such invalidity shall not affect, impair, or invalidate the remainder hereof or its application to any other person or circumstance. It is hereby declared that the legislative intent of the City Council that this chapter should have been adopted had such invalid provision, clause, section, part, or application not been included herein.

**Section 12. Effect upon passage.**

This ordinance shall take full force and effect upon its passage and approval.

